IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.14/2000

Govind Ram & Ors. **Versus** Ishar Ram & Anr.

DATE OF ORDER :: 10/08/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Gajendra Bhuwan for Mr. Anoop Dhand, for petitioners
Mr. Arun Sharma, P.P.

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Instant petition is directed against the order dated 31st March, 1999 whereby learned Magistrate after affording opportunity of hearing to the parties, attached the property in dispute and appointed Receiver u/s.146 Cr.P.C. – against which present petitioners preferred revision petition which was dismissed on 16th November, 1999.

Respondent herein as alleged purchased the land in question bearing Khasra No.266, 15 bighas & 1 biswa from petitioners and took possession and started cultivating the field and also constructed two huts and filed application that petitioners are forcibly wanted to dispossess him from the disputed land and on that basis the SHO, Police Station, Laxmangarh submitted compliant u/s.145/146 Cr.P.C. before the Court of Sub-Divisional Magistrate, Fatehpur and after giving opportunity of hearing to both the respective parties, interim order was passed by learned

Magistrate with regard to attachment of property and appointment of Receiver. Petitioners have filed separate suit for cancellation of sale deed which is pending before learned trial Judge and interim order was also passed, of which reference has been made by learned court in the order impugned.

Counsel for petitioner submits that without recording his satisfaction on material which came on record learned Magistrate proceeded for attachment of property and appointment of Receiver without taking note of order of status quo passed by learned trial Judge in the civil suit filed by them in respect of cancellation of sale deed. Thus, the action of learned Magistrate in attaching the property and appointing Receiver thereto in no manner can be said to be justified and the Revisional Court has also failed to consider the order of Civil Court which was stressed by petitioners.

No one appeared on behalf of respondent despite service.

I have considered the submission of counsel and perused the order impugned.

U/s. 145 (1) Cr.P.C. whenever the authority is satisfied from a report made by Police Officer that there is any likelihood of breach of peace

exists concerning any land, learned Magistrate after giving opportunity of hearing may take appropriate action under law which is subject to the outcome of proceedings pending u/s.145 Cr.P.C. so that as a interim measure peace is maintained and even if considered appropriate may appoint Receiver during pendency and in the instant case, the learned Magistrate has afforded opportunity to the parties concerned and after taking note of the complete material came on record that the petitioners herein have sold their respective piece of land to the respondent and later on, sale deed itself was challenged by them and on account of alleged sale deed which was executed in favour of non-petitioner as alleged by him he took possession and started cultivating the field. The Civil Court only passed order of status quo as it was not clear that was in possession and the Executive Magistrate after taking note of the report and so also other material on record, recorded his due satisfaction and proceeded to attach and appoint Receiver thereto, obviously, it was an interim measure subject to final outcome of the dispute which was pending before Civil Court in regard to the disputed property.

After going through the finding recorded under order impugned, this court is of the opinion that action initiated after recording due satisfaction of learned Magistrate in no manner

can be said to be erroneous and this court does not find any justification to interfere in the order impugned at this stage. However, it is made clear that the arrangement which was made by learned Magistrate in exercise of his powers u/s.145/146 Cr.P.C. will be subject to final outcome of the civil suit preferred by petitioners and the decree, if there is any, of the civil suit will be final for all purposes and these proceedings will merge into the final decision in the pending civil suit.

With the above observations, the writ petition stands disposed of.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.